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18 UNITED STATES BANKRUPTCY COURT

19 NORTHERN DISTRICT OF CALIFORNIA

20 SAN FRANCISCO DIVISION

21 In re) CASE NO. 11-31376-DM
22 Howrey LLP,)
23) Chapter 11
24)
25) Hearing Date: January 11, 2013
26) Time: 10:00 a.m.
27 Debtor) Place: Courtroom 22
28) 235 Pine Street, 19th Floor
)) San Francisco, CA 94104
)) Judge: Honorable Dennis Montali
))

29 **JOINDER OF CITIBANK, N.A. TO THE CHAPTER 11 TRUSTEE'S MOTION**
30 **FOR AN ORDER ENFORCING THE AUTOMATIC STAY**

1 Citibank, N.A. (“Citibank”), a secured and super-priority creditor in the above-
2 captioned chapter 11 case (the “Chapter 11 Case”), hereby files this joinder (the “Joinder”) to the
3 Chapter 11 Trustee’s (the “Trustee”) motion for an order enforcing the automatic stay (the “Stay
4 Motion”) [Dkt Nos. 862-864; 885]. The Stay Motion seeks entry of an order declaring, *inter*
5 *alia*, that the class action complaint (the “Complaint”) filed by an entity called “Howrey
6 Claims LLC” that was recently created by attorney William McGrane violates the automatic
7 stay. Citibank hereby joins in the Trustee’s Stay Motion; among other things, the Complaint is
8 an attempt to subvert the absolute priority rule and other bedrock bankruptcy principles, and
9 threatens to severely impair the Trustee’s ability to obtain and distribute litigation recoveries for
10 the benefit of *all* Howrey creditors in accordance with the Bankruptcy Code. In support of this
11 Joinder, Citibank respectfully states as follows:

12 **JOINDER**

13 On April 11, 2011 (the “Filing Date”), Mr. McGrane, on behalf of three putative
14 Howrey creditors with alleged claims totaling \$36,608.89, including a \$994.25 claim by Jan
15 Brown & Associates (the “Alleged Jan Brown Claim”),¹ filed an involuntary petition (the
16 Involuntary Case) against the Debtor for relief under chapter 7 of title 11 of the United States
17 Code (the “Bankruptcy Code”) in the Bankruptcy Court for the Northern District of California
18 (the “Court”). On June 6, 2011, the Court entered an order converting the Involuntary Case to a
19 voluntary case under chapter 11 of the Bankruptcy Code. As of the Filing Date, Citibank was
20 owed approximately \$57 million based on the principal amount of loans outstanding under its
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25 ¹ According to the invoice attached to the proof of claim filed by Mr. McGrane as counsel with respect to the
26 Alleged Jan Brown Claim, Howrey’s alleged obligations were barely 30 days past due on the Filing Date. The
27 Trustee has filed an objection to the Alleged Jan Brown Claim on the grounds that the Debtor’s books and
28 records do not indicate that any such amount was due as of the Filing Date [Dkt. No. 917]. Mr. McGrane
appears to have purchased the Alleged Jan Brown Claim through “Howrey Claims LLC” for the sole purpose of
bringing the Complaint.

1 loan agreement with Howrey. As of the date hereof, Citibank is owed approximately \$38
2 million, which claim is secured by substantially all of the Debtor's assets.
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4 On June 15, 2011, the Bankruptcy Court entered that certain *Interim Order (A)*
5 *Authorizing Use of Cash Collateral; (B) Granting Adequate Protection to Pre-Petition Secured*
6 *Creditor Citibank, N.A.; and (C) Scheduling a Final Hearing* [Dkt. No. 98] (as subsequently
7 amended, the "Cash Collateral Order"). Pursuant to the Cash Collateral Order, and subject to
8 certain budgets periodically agreed to by Citibank and the Trustee, Citibank has consented to the
9 Trustee's continued use of Citibank's cash collateral to fund the administration of this
10 Chapter 11 Case, and was granted a super-priority administrative expense claim to the extent of
11 any diminution in the value of its collateral (the "Super-Priority Diminution Claim"). See Cash
12 Collateral Order § 4(b). These disbursements have been substantial to date – in excess of \$16
13 million since the Petition Date. Accordingly, in addition to being the largest secured creditor in
14 this Chapter 11 Case, Citibank currently has a Super-Priority Diminution Claim in excess of \$16
15 million that is senior to, among other claims, all prepetition unsecured claims.
16

17 Since the Trustee's appointment in October 2011, millions of dollars of Citibank's
18 cash collateral have been expended to investigate and formulate a variety of causes of action that
19 the Trustee intends to prosecute for the benefit of the Debtor's estate and creditors, including
20 potential causes of action against Howrey's former partners and their current law firms.²
21 Citibank understands that the Trustee has substantially completed his analysis of such potential
22 causes of action, and recently began the process of commencing settlement discussions with
23 certain of such former Howrey partners and their current law firms.
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26 ² In January 2011, Mr. McGrane became co-counsel to the Howrey Official Committee of Unsecured Creditors
27 (the "Committee"), and in that role undoubtedly obtained detailed, privileged knowledge of the Trustee's
activities and litigation strategies. In September 2012, the Committee removed Mr. McGrane as co-counsel
28 [Dkt. Nos. 796; 802].

1 It cannot be a coincidence that just as the Trustee is making material progress in
2 pursuing causes of action that are expected to result in substantial recoveries for the Debtor's
3 estate, Mr. McGrane purchased the Alleged Jan Brown Claim, formed "Howrey Claims LLC",
4 and filed the putative class action Complaint asserting direct claims against the former Howrey
5 partners under a so-called "alter ego" theory.
6

7 Citibank agrees with the Trustee that the automatic stay prohibits the prosecution
8 of the Complaint, and joins in the arguments set forth in the Trustee's Stay Motion. As the
9 Debtor's largest secured and super-priority administrative expense claimant, Citibank
10 emphasizes that allowing the Complaint to proceed would violate fundamental bankruptcy law
11 principles of distribution priority and fairness, turning the absolute priority rule on its head. As
12 set forth in the Stay Motion, the Complaint's substantive claims against the former Howrey
13 partners belong to the Debtor's estate. As a result, any recoveries on such claims should be for
14 the benefit of *all* of the Debtor's creditors and distributed among them in strict compliance with
15 the priority scheme set forth in the Bankruptcy Code. It would be manifestly unjust and
16 improper to permit "Howrey Claims LLC" or any individual Howrey unsecured creditor (rather
17 than an estate fiduciary on behalf of all constituents) to prosecute claims and recover amounts
18 from the former Howrey partners that would otherwise be distributed, if prosecuted by the
19 Trustee, in accordance with the priorities and procedures provided for under the Bankruptcy
20 Code.³

21 The integrity of the bankruptcy process itself would be compromised if
22 professionals were permitted to hijack bankruptcy proceedings by manufacturing standing

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26 ³ In addition to Citibank's substantial secured claim and Super-Priority Diminution Claim, several Howrey
27 creditors have asserted large priority and administrative expense claims that, if ultimately allowed, also would
28 be senior to general unsecured claims, and would therefore be entitled to be paid in full prior to general
unsecured creditors.

1 through the purchase of a nominal disputed claim for the sole purpose of commencing litigation
2 to divert estate recoveries that should be distributed in accordance with the priority scheme set
3 forth in the Bankruptcy Code. “Howrey Claims LLC” should not be permitted to subvert this
4 Chapter 11 Case and usurp the Trustee’s function through the artifice of the Complaint.
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6 Not only would allowing the Complaint to proceed violate fundamental
7 bankruptcy law principles, but it would also disrupt and prejudice the Trustee’s ability to pursue
8 these and other similar claims against the former Howrey partners and their current law firms.
9 The mere filing of the Complaint already has diverted the Trustee’s attention and resources over
10 the past few weeks, not to mention the mounting costs to the estate (and continued consumption
11 of Citibank’s cash collateral) incurred in fighting the “Howrey Claims LLC” onslaught. If the
12 Complaint is allowed to proceed, the Trustee likely will be hamstrung in his litigation efforts
13 going forward, because litigants likely will be unwilling to settle with the Trustee while the
14 specter of the Complaint looms. “Howrey Claims LLC’s” efforts should be quickly and
15 summarily halted so that the Howrey Chapter 11 Case can be efficiently and properly
16 administered in this Court in accordance with the Bankruptcy Code.
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CONCLUSION

WHEREFORE, Citibank respectfully requests that the Court grant the relief requested in the Stay Motion, and grant such other and further relief as it deems just and proper.

Respectfully submitted,

Dated: December 14, 2012

**PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP**

Kelley A. Cornish
Diane Meyers

and

PEITZMAN WEG LLP
Lawrence Peitzman

By: /s/ Lawrence Peitzman
Counsel to Citibank, N.A.